1944 K **File No.** O. Elec supply (L.U. war costs) 44

Legal Dept.

A. **BRANCH**

Subject:— Opinions under the Bombay Electricity supply (Licensed undertakings war Costs) Order 1941.

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C O N T E N T S

Legal Department file No O. Elec. Supply (L.U. War Costs/1944

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Mjr/9/7
5 Cs.

S.A.S.

R.I.No. 6383
24-7.44

I Agree

2. The questions raised for the consideration of the R.L.A.

(1) Whether in cases where a licensee fails to submit a declaration under caluse 3(1) of the Bombay Electricit; (Licensed Undertakings'War Costs) Order, 1944 within a period of thirty days from the commencement of the order, surchage can be fixed under the first proviso to clause 4(1); and

(2) Whether in cases where a licensee submits a declaration but fails to submit a writing furnishing the information as provided in (a) to (e) to sub-clause (1) of clause 3 of the order, surcharge can be fixed under the first proviso to clause 4(1) of the Order.

Reading caluse 3(1) with clauses 4(1) and 7 of the Bombay Electricity (Licensed Undertakings'War Costs) Order, 1944 it appears that what is essential under caluse 3(1) is the submission by a licensee of a declaration within a period of thirty days from the commencement of the order opinion whether a War Costs Surcharge in terms of the order was or was not desirable in the case of his undertaking. His failure to submit such declaration within the prescribed period would mean that in his opinion a War Costs Surcharge was not desirable in the case of his undertaking, in which case the question of fixing surcharge under caluse 4(1) would not arise; much less would it arise under the first proviso to caluse 4(1). The Order does not contain any provision empowering Goct. to extend the time for submitting a declaration under clause 3(1). Consequentl when a licensee fails to submit a declaration within thirty days from the commencement of the Order, his rights are barred however valid the reasons may be for his default.

The information to be submitted in writing as provided in (a) to (e) to clause 3(1) of the order is intended to help Gobt. to determine the desirability or otherwise of levy of a War Costs Surcharge and the extent thereof. Consequently the submission of such information in

~~surcharge under the provisions of this clause...~~

so essential as to preclude a defaulter's rights to the surcharge under the Order. This is apparent from clause 4(1) under which what is necessary is the submission of declaration under clause 3(1). Consequently the failure of a licensee to furnish the information in writing within the period of thirty days from the commencement of the Order would not preclude the application of caluse 4(1) provided he has submitted his declaration in time under clause 3(1). In such cases what should be done is to give an opportunity to licensees to furnish the information within a reasonable time, failing which Govt. may fix any reasonable surcharge within the limit prescribed under clause (a) or (b) to clause 4(1) as the case may be and then hold an enquiry under the first proviso to clause 4(1).

Sd/- R.T.K.
26/7

A.L.K.

I agree on some points but not on others.

(1) I agree that Government has power to refuse declarations made after 30 days.

(2) I agree that the submission of the relevant caluclations need not be within 30 days but need only be in time to be considered before Government makes its order within 60 days.

On the following four points I disagree:

(3) I disagree regarding Government's power to make an order without the relevant calculations. The Electricity Supply Order clearly states that Government order is to be based on certain calculations. Any order made without consideration of the relevant calculations would be a mullity

(4) The second proviso to clause 4(1) of the Order would not admit enhancement of the order fixing the orbginal rate is

from the commencement of the Order provided that it is not so delayed as to prevent Government from fixing under clause 4(1) the rate of war-costs surcharge in respect of the licensee's undertaking within 30 days of the receipt of the licensee's declaration under caluse 3(1) I don't agree with S.A. A.G.R. that Government has power to fix the surgharge even after 60 days from the date of the Order. Clause 4(1) is as mandatory as clause 3(1) so far as the time limit is concerned and without the Order being suitably amended Government would not be competent to pass any order fixing a surcharge after 60 days.

3. S.A.'s note appears to be correct on the general questions raised; but so far as the case of the Ahmednagar Electric Supply Company is concerned I am at a loss to understand why the P.W.D. have taken the view that the said Company has failed to make the required declaration within the prescribed limit of 30 days. In their letter of 11th July which date is within the prescribed limit, the Company have definitely expressed their openion that a surbharge is desirable and that the present surcharge should at least be maintained if it is not possible to increase it. The Order prescribes no form in which a licensee is required to make a declaration under caluse 3(1). The Company's letter of 11th July having regard to its tenor cannot but be regarded as a declaration. It was made within the prescribed time limit and the P.W.D. would be justified in treating it as such. It is true that the Company has not yet submitted the information in writing under (a) to (e) of clause 3(1) but as I have already observed it is not incumbent on them to do so within 30 days and Government can well grant them extension of time provided the information is received in such good time as to enable Government to pass an order fixing the surcharge before the expiry of 60 days. If the Company fails to do so it would be open to Government to fix a reasonable surcharge within the limit prescribed under (a) or (b) to clause 4(1) and then hold an enquiry

under the first proviso to clause 4(1)-

I would therefore reply as under:-

Office of-the R.L.A.

Reading caluse 3(1) with clauses 4(1) and 7 of the Bombay Electricity Supply (Licensed Undertakings's War Costs) Order, 1944. it appears that what is essential under caluse 3(1) is the submission by a licensee of a declaration within a period of 90 days from the commencement of the Order stating whether in his opinion a war costs surcharge in items of the Order is or is not desirable in the case of his undertaking. His failure to submit such declaration within the precribed period would be tant-amount to his being of opinion that a war costs surcharge was not desirable in the case of his undertaking and consequently the question of fixing a surcharge under clause 4(1) would not arise; much less would it arise under the first proviso to clause 4(1). The Order does not contain any provision empower-ing Government to extend the time for submitting a declaration under clause 3(1) Unless therefore the Order itself is amended declarations under caluse 3(1) cannot be accepted after 30 days from the date of the Order.

2. This time limit of 30 days applies to declarations only and not to the information which a licensee is required to submit in writing under caluse 3(1). The information required of the licensee in respect of (a) to (e) of clause 3(1) is intended to assist Government in determining the desirability or otherwise of the levy of the war costs surcharge and the extent thereof It is open to Government to accept such information even after the lapse of 30 days, provided that the submission is not so delayed as to prevent Government from fixing under caluse 4(1) the rate of war costs surcharge in respect of the licensee's undertaking within 30 days of the receipt of the licensee's declaration under caluse 3(1). Consequently the failure of a licensee to submit the information in writing within 30 days from the commencement of the Order will not preclude the application of clause 4(1) provided he has submitted his declaration in time made clause 3(1).

3. The R.L.A. is however at a loss to understand why the P.W.D. have taken the view that the Ahmedanagr Electric Supply Company have failed to make the required declaration within the prescribed limit of 30 days under caluse 3(1). In their letter of 11th July 1944 (at page 3 ante) the Company have definitely expressed their opinion that a surcharge was desirable and that the present surcharge in respect of their undertaking should at least be maintained if it is not possible to increase it. The Order prescribes on form in which a licensee is required to make a declaration under caluse 3(1). The Company's letter of 11th July was written within the prescribed time limit and having regard to its contents it cannot but be treated as a declaration. It is true that the Company have not yet submitted the information in writing on points (a) to (g) of clause 3(1), but as already observed it is not incumbent on them to do so within 30 days and Government can well grant them extension of time provided the information is is received in time to enable Government to pass an order fixing the surcharge before the expiry of 60 days. Should the Company fail to submit the information in good time it would still be open to Government to fix a reasonable surcharge within the limit prescribed under (a) or (b) to clause 4(1) as the case may be, and then hold an inquiry under the first proviso to that clause.

Sd/- P.N.Moos
1/8/44

o.c.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 5432, dated the 22nd August 1944.

Mjr/977

4 Cs.

L.D.R.I. No 9354
4/11/44

Submitted

2. This is a linked case with P.W.D. file 6041/36 relating to the judgment of the D.J. Kaira in C.S. No. 4 of 1944 filed by the Nadiad Municipality against the Nadiad Electricity Co. for refund of surcharge paid by the Municipality in pursuance of B,W.D. Notification No. 6041/36 dated 11-3-43. This Notn. is withdrawn by P.W.D. order No. 6331/36, dated 9th August 1944 issued in pursuance of clause 4(1) of the Bombay Electrict Supply (licensed Undertaking war costs) order 1944. This order fixes the rate of war costs surcharge in the case of Nadiad Electric Supply Co. at 33/ 1/3. P.W.D. desires to know whether in view of the decision of the D.J., Kaira in the linked file any action on the part of Govt. is necessary with reference to Govt. order No. 6331/36, dated 16-6- 1944 and the subseqent order No. 633/36, dated 9-8-44 issued thereunder.

Mjr/9/7
4 Cs.

Office of the R.L.A.

The decision of the District Judge, Kaira in Civil Suit No. 4 of 1944 will not affect Government Order No. 6331/36 dated the 16th June 1944 and the subsequent orders issued in that connection

Sd/- P.N.Moos
10/11/44

o.c.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 7854, dated the 10th November 1944.

Mjr/9/7

4 Cs.

L.D.R.I. No. 9353/4-11-44

Submitted.

2. This and the linked file No 6331/36 below relates to the judgment of the D.J. Kaira in C.S. No. 4 of 1944 filed by the Nadiad Borough Municipality against the Nadiad Electricity Coy., for refund of the surcharge paid by the Municipality in pursuance of P.W.D. Notification No. G.N. 6041/36, dated the 11th March 1943. The D.J. has decided the points against the Nadiad Electricity Coy. on the following among other grounds, viz: (1) that the notification No. 6041/36, dated the 11-3-43 is ultra vires rule 81(2)(b) of the D. of India Rules; (2) that section 2 of the Defence of India Act has no application to a private contract between the licensee (The Nadiad Electricity Coy.) and the Municipality; (3) that caluse 2(a) of the Notification neither relaxes any maximum limits of rates nor contract prices and therefore it is beyond the scope of rule 81(2)(b), (4), that the delegation of power to levy surcharge to fix the percentage of surcharge is beyond the scope of rule 81(2)(b). The papers are referred to the R.L.A. for advise as to whether any action on the part of Govt. is necessary in view of the judgment of the D.J. Kaira.

Mjr/9/7

4 Cs.

Office of the R.L.A.

The Nadiad Electric Supply Co. may be requested to file an appeal in the High Court against the decision of the District Judge, Kaira.

Sd/- P.M.Moos

O.C. 10/11/4

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 7855, dated the 10th November 1944.

Mjr / 9/7

4 Cs.

SVA 9/8

SMS 9/8